

War Criminals— Testing the Limits of Military Force

By F.M. LORENZ

19981007 039

The coming year will see a critical phase in the international effort to bring peace to Bosnia and Herzegovina. Stabilization Force (SFOR) has an ambitious mission that will continue into summer 1998. Although the war has ended, efforts to build institutions and promote reconciliation have faltered.



The promises of the Dayton peace agreement are largely unfulfilled after more than a year and the region has drawn into ethnic enclaves divided by the "inter-entity boundary line" and long-standing hatred. A critical milestone will come with local elections set for September 1997.

One of the most controversial aspects of the peace process has been the NATO policy for arresting those indicted by the International Criminal Tribunal for the Former Yugoslavia (ICTY). After three years the tribunal

has only a handful of indicted war criminals in confinement; most are believed to be at large in the former Yugoslavia. There have been public calls for NATO to take an aggressive role in apprehending them.¹ Many political pundits in the United States claim that there can be no peace unless these war criminals are brought to justice and that their very freedom is an impediment to refugee resettlement and reconciliation. Media reports indicate that NATO has often refused to take action when notorious suspects flout the law. As part of plans for its continued mission in Bosnia, NATO is said to be considering a new military policy on indicted war criminals.

This situation raises questions about the limits of military force that must be viewed within the broader context of U.S. foreign policy. This article addresses the following issues: What is NATO military policy with respect to indicted war criminals? Is it consistent with both U.S. foreign policy and international law? Is it effective? And if a new policy is adopted can it be implemented to promote policy objectives in the Balkans?

Background

The NATO military mission in Bosnia commenced in December 1995 after U.S. leadership made possible the first real cease-fire after four years of

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war. Dayton implemented U.S. policy by seeking to unify Bosnia in a single multi-ethnic state. But the accords also divided the country into two entities based on ethnic differences. An essential component was creation of Implementation Force (IFOR) to execute military aspects of the agreement. The initial zone of separation between entities as well as the cease-fire and demobilization provisions were enforced by IFOR. The civil terms of the Dayton accords are much broader in scope. They include the conduct of free and fair elections and establishment of an effective national government. IFOR achieved the key military objectives

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during the first four months of the operation. While the short-term political objectives of saving lives and stopping the war were clearly met, the long-term civil objectives have proven more formidable. Few refugees have been able to return home despite the promises made at Dayton. Local political leaders have created various barriers including road blocks and a maze of red tape. But by and large, most citizens simply refuse to live alongside their recent enemies. SFOR has the responsibility of building on the IFOR mandate into summer 1998. The challenge will be to capitalize on past success and provide the stability to implement the civilian objectives of the peace process.

Military force has been used historically as an instrument of foreign policy in a wide range of situations from war to "forceful persuasion" to humanitarian intervention. It is a fundamental principle of foreign policy that military means must be carefully tied to overall political objectives.² As indicated in U.S. national security strategy, there are five basic components of foreign policy at stake in the former Yugoslavia:

- sustaining a political settlement that preserves Bosnia's territorial integrity and provides a viable future for all its peoples

- preventing the spread of the conflict into a broader Balkan war that could threaten both allies and the stability of new democratic states in central and eastern Europe

- stemming the destabilizing flow of refugees

- halting the slaughter of innocents

- supporting the key role of NATO in Europe while maintaining the U.S. role in shaping European security architecture.

A review of the Dayton agreement provides additional insight into U.S. political objectives. Its preamble sets out the overall purpose: "to bring an end to the tragic conflict" and to "promote an enduring peace and stability." The military annex, 1A, describes the mission in terms of cessation of hostilities, redeployment of forces, enforcement of the zone of separation, and establishment of military commissions. The other annexes, 2-11, address civilian implementation of the agreement under supervision of the high representative. Civilian tasks include monitoring elections, returning refugees and displaced persons, promoting human rights, and creating an international police task force. Some analysts think that the political and military goals established at Dayton are essentially irreconcilable. Many have noted contradictions: a military objective to partition the country and a political one to unify it into a multi-ethnic state. It should not be surprising that in the first year implementation of the agreement can be viewed as a military success but a political failure. Still, U.S. involvement has resulted in achievement of most of the short-term objectives, and SFOR will have an additional opportunity to provide a climate for peace.

The Limits of Force

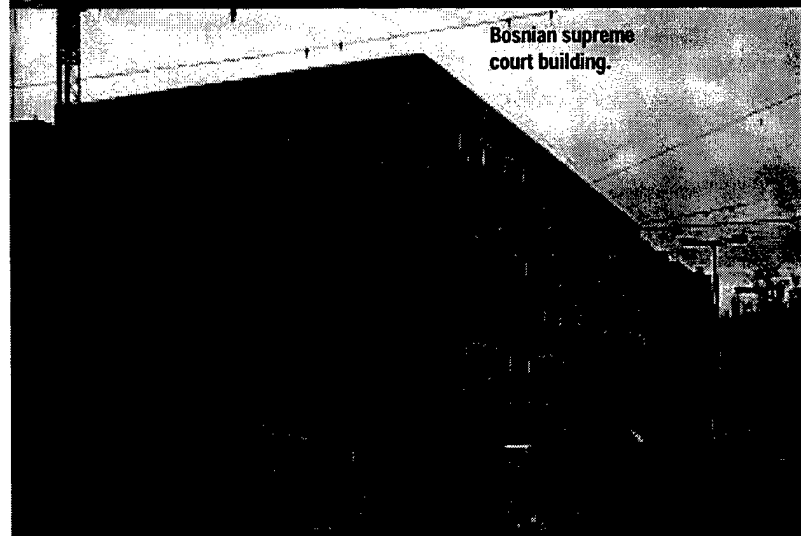
Implementation of the Dayton accords in Bosnia raises serious questions about the limits and effectiveness of military force in peace support operations. Not all of the Dayton objectives are amenable to a military solution. Force is a blunt instrument more suited to war than to the complex world of peace operations and military

operations other than war (MOOTW).³ Creating a demilitarized "zone of separation" in Bosnia is a clear and achievable military task. But enforcing the return of displaced persons to their homes, guaranteed by Dayton, is a different issue. Some have called for SFOR to enforce refugee resettlement. This summons for an easy military solution demonstrates a lack of understanding of the practical limits of force.

SFOR has 31,000 troops in Bosnia, and general security is within its capability. But more than two million persons were displaced in Bosnia and Herzegovina during four years of war. Most vacated homes have been reoccupied by new residents and ethnic hatred still runs deep. Local citizens are simply not willing to allow a peaceful return of their recent enemies. Moreover, Muslim authorities are reported to be planning a return of their own refugees to areas in Serbska that have military significance, which is not lost on local citizens. A SFOR patrol of a dozen men is not likely to stop an unarmed crowd of 200 Serbs intent on burning Muslim homes. Although troops can provide added security and respond to known threats, it would not be feasible to place a 24-hour armed guard on thousands of homes. The movement and return of refugees is essentially a civilian task best left to the people and local officials.

The United Nations and NATO

ICTY was created by U.N. Security Council resolution 827 of May 25, 1993. The declared purpose was to prosecute persons responsible for serious violations of international humanitarian law. The United Nations called for all states to cooperate fully with the tribunal⁴ and the Dayton agreement requires its parties to collude in the matter of indicted war criminals.⁵ At the time of the accords some seventy indictments had been returned, most for Bosnian Serbs. But ICTY has no police authority to search out or apprehend indicted war criminals. Like the NATO force it must enter with the permission of the sovereign nation where it operates. The international police currently in Bosnia are unarmed and perform only advisory and training



Bosnian supreme court building.

IFOR apprehending Serb looters, Sarajevo.

Joint Combat Camera Center

F.M. Lowery

roles. Hence there is a natural tendency to turn to SFOR to gain custody of the criminals.

There is no discussion of the military policy toward indicted war criminals in the Dayton agreement. The NATO force—first IFOR, now SFOR—is led by the U.S. commander but policy is set by the 16-member North Atlantic Council (NAC). The policy for dealing with indicted war criminals was carefully formulated by NAC before the first IFOR soldier set foot in Bosnia. The initial policy was part of the rules of engagement for IFOR. It essentially provides that indicted war criminals will be apprehended if encountered by NATO personnel in the course of their normal duties. It does not permit action to hunt them down nor does it require apprehension if prudence dictates otherwise. Few would argue that

small, lightly armed SFOR elements should attempt to apprehend heavily guarded war criminals.

The policy on indicted war criminals is only one part of the overall NATO military policy in the Balkans. Though widely criticized in the media as unreasonably timid, the policy has served well to maintain stability and keep the criminals on guard and relatively isolated. It allows time for diplomatic and economic initiatives to permit the individual nations to turn criminals over to the tribunal. Perhaps most important, NATO has a unified policy that sets effective limits on military action. It is consistent with U.S. political objectives, and the war has ended—at least for now. In that sense the policy has been highly effective.

International Law

There is no precedent for the current situation in Bosnia and Herzegovina. Historically, the trial of war criminals has been “victors’ justice” after international armed conflict. The occupying force maintains full control of police and civil institutions. ICTY was created by the international community while the conflict was still under way. In March 1996 Amnesty International, a private human rights group, issued “an open letter to IFOR commanders and contributing governments” concerning the search for war criminals. It criticized IFOR for “refusing to search for persons suspected of genocide, other crimes against humanity, and serious violations of humanitarian law.” The letter cited reports that IFOR troops had encountered several indicted individuals but failed to arrest them. It further maintained that the IFOR failure to search for suspects violates the Geneva Conventions of 1949⁶ and Security Council resolution 827 and is inconsistent with Dayton.

Both the Dayton and Geneva obligations with respect to indicted war criminals apply to the states in the former Yugoslavia, not NATO itself. IFOR was not an occupying force in Bosnia, and SFOR has the same status. The NATO force is operating within

sovereign nations that have given it permission to carry out the specific military tasks of Dayton. Searching for suspects is not included. In fact, an agreement had to be negotiated between NATO and Bosnia and Herzegovina to turn criminals over to ICTY in the event they were apprehended by IFOR. There has been regular cooperation between NATO and ICTY, including security for investigative teams and

there is no legal requirement for NATO to actively pursue indicated war criminals

temporary guard of alleged mass graves. In March 1996 IFOR delivered two Serb suspects being held in Sarajevo to The Hague in response to a formal ICTY request. There is no legal requirement for NATO to actively pursue indicted war criminals, and the conduct of IFOR has been entirely consistent with international law.

Lessons from Somalia

U.S. forces arrived in Somalia in December 1992 as part of a major international humanitarian intervention, Operation Restore Hope. The narrow military mission at the outset was to provide security for delivering relief supplies. After the mission was turned over to the United Nations in May 1993 it was extended to disarming the factions and rebuilding civil institutions. American forces remained on the scene under U.S. command to provide military support. In the summer of 1993 both the United States and the United Nations underestimated the level of backing Mohammed Farah Aided would muster within his fiercely loyal clan. Although vilified in the West he became a national hero and potential martyr when the head of the U.N. mission put a reward on his head. Soon the United States began commando style operations to seize him. At that point it crossed what has since been called the "Mogadishu Line" by being perceived as supporting one faction by attacking the leadership of another. A failure to coordinate with the United Nations the final decision

to assault Aided's stronghold at the Olympic Hotel in October 1993 contributed to the disaster that led to a reversal of U.S. policy and withdrawal.⁷

The collapse of U.S. policy in Somalia was not due to a lack of political direction. One day after the ambush of Pakistani peacekeepers in June 1993, the Security Council called for the "immediate apprehension" of those responsible.⁸ American forces were increased in preparation for commando operations against Aided and his faction. U.S. Ambassador to the United Nations Madeline Albright went directly to the public to gain support for a tough administration policy.⁹ Her position is worth noting because of her current role in formulating policy for indicted war criminals in Bosnia.

As pressure mounted, the U.S. commander with the most experience in Somalia, Lieutenant General Robert Johnston, USMC, suggested enlisting Aided's rivals to undercut his influence. "Political pressure is the best way to reduce Aided's power. If you end up fighting him you play to his strong suit."¹⁰ These remarks were made just a week before the fateful assault at the Olympic Hotel in Mogadishu that left 18 Americans dead. Despite clear political direction, the policy proved to be misguided and unsuitable for a region embroiled in tribal/ethnic conflict. Perhaps the most important lesson of Somalia is that military force should never be substituted for effective diplomacy. As an ironic footnote, Aided eventually died as a result of a battle with his long-time adversary, Ali Mahdi Mohammed. The removal of Aided did nothing to restore peace to Somalia and the country is still divided by factional fighting

Economics and Diplomacy

Before considering a new military policy it is essential to review the other elements of U.S. national power available to influence action in the former Yugoslavia. One is economic sanctions. They played a major part in isolating the Serbs and forcing them to the bargaining table at Dayton. But they have been underutilized in obtaining indicted war criminals. Those who demand military action rarely mention

this option as an alternative or means to be used in combination with military power. They also ignore a fundamental principle of strategy laid down by Sun Tzu: It is better to subdue the enemy without fighting than to be the victor in a hundred battles.

U.S. policy, both economic and diplomatic, has been most effective when coordinated with NATO allies. But there is at least one area where it has evolved independently. The "equip and train" program for the combined Croat and Muslim Federation has proceeded despite opposition in Europe where there is a concern that more weapons will ultimately destabilize the region. The first delivery of tanks and heavy weapons was made to the Federation army in December 1996 after all conditions were met. One of the last requirements was the removal from the Bosnian government of an individual with known sympathies to Iran. But there has been no effort to tie arms shipment to the surrender of indicted war criminals in Croat-held areas which may reveal something about the relative priority of U.S. objectives. America could be seen as favoring the Muslims and Croats by implying that surrender of indicted war criminals is essentially a Serb problem. As in Somalia, such perceptions can undermine peace processes. A coordinated economic and diplomatic strategy with the threat of military force stands the best chance of bringing the war criminals to justice.

The Scale of Justice

The ICTY role in Bosnia is unique because the process is designed not only to establish guilt or innocence but to contribute to the peace process itself. The war was still in progress when the tribunal was established, and some hoped that it would hasten an end to years of bloodshed. But the indictment of Radovan Karadzic (the former president of the Bosnia Serbs) and Ratko Mladic (once the head of the Bosnian Serb military) failed to stop one of the most brutal acts of the war, the slaughter of Muslim civilians at Srebrenica in July 1995. ICTY did not drive the Serbs to the peace table; it was the fact that in November 1995



Guarding suspected site of mass grave near Ceparde, Serbska.

55° Signal Company, Combat Camera (Glenn W. Suggs)

they were militarily and economically at a dead end.

Despite the low number of individuals in custody ICTY has made historic gains in returning indictments for genocide and crimes against humanity. The world is witness to the daily testimony of unspeakable brutality. Public disclosure will likely have much the same effect as the truth commissions in South Africa. The decision by Pretoria to create truth commissions rather than conduct criminal trials was a compromise designed to avoid further discord. Many defendants there will be granted amnesty, and the hearings themselves are expected to promote reconciliation in a nation long torn by factional strife. Even without more arrests the work of ICTY has resulted in a revival of international humanitarian law and affirmed the customary unwritten law that binds all states to international standards of behavior.

Although only a handful of indicted war criminals are now in the custody of the tribunal there has been steady progress. The first sentence was handed down in early December 1996. Hopefully, shifting political loyalties in the former Yugoslavia will bring more arrests. Reports from the Republic of

Serbska indicate that General Mladic has been removed from office. The key indictees have been "branded with the mark of Cain," serving as some measure of retribution.

Elections

Many observers contend that the national elections in Bosnia were a sham: The conditions for free and fair

military action in Bosnia similar to that initiated in Somalia could destabilize the entire peace process

voting simply did not exist. There is general agreement that the results have solidified the hold of the nationalist parties. Much is at stake in the local elections now set for September 1997. Precipitous military action by SFOR could easily inflame the already deep ethnic hatred and confirm what many undecided voters have long suspected. The "international community" is out to destroy their hard-won independence. This is particularly true

for the Serbs, who view themselves as a nation of victims who must fight for survival. Even if the supporters of Karadzic and Mladic were to quietly watch their leaders be carried off by NATO troops, the certain result in Serbska would be to further radicalize the population and increase support for Karadzic's party. A likely result would be hostage-taking by the Serbs and increasing military confrontation with SFOR troops. This pattern could easily be repeated should similar action be taken in Muslim or Croat areas of Bosnia. Although the national elections may have solidified the control of the nationalist parties, there was little violence. This in itself may be a first step in national reconciliation.

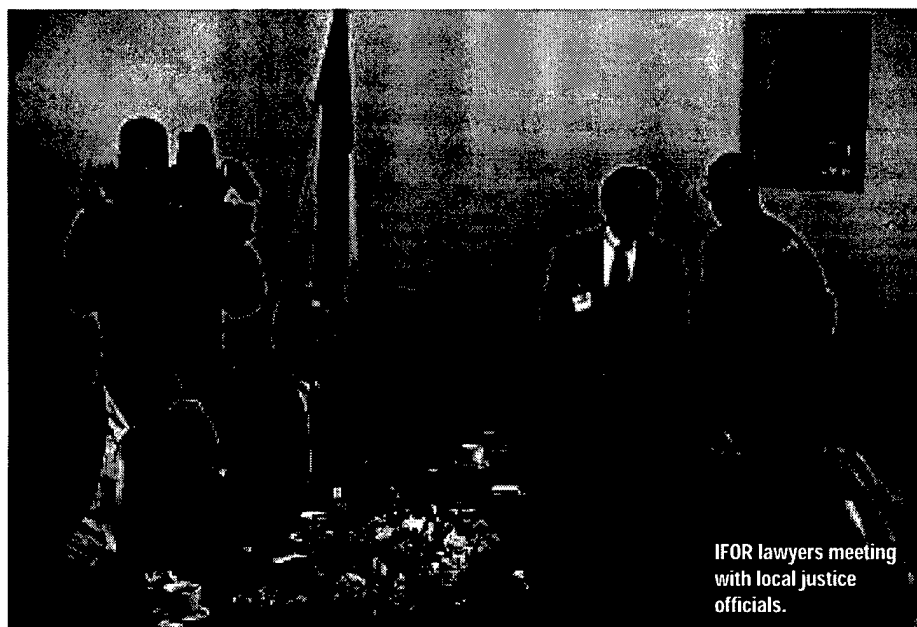
A New Policy

Military action in Bosnia similar to that initiated in Somalia could jeopardize success to date and destabilize the entire peace process. An effective policy will require diplomatic, economic, and military power. There are six elements to be considered in developing a new NATO policy concerning indicted war criminals.

Develop clear political objectives. A major factor in the military success thus far has been a clear and narrowly-defined mission. If there is to be a new mission it must be linked to political objectives. It is not enough to seek the "arrest" of war criminals. This fails to provide sufficient guidance to develop a coherent military policy. If combat operations to search out and seize the indictees are to be directed, that mandate

must be crystal clear. Up to now the force in Bosnia has received mixed political signals. One objective is to separate factions and another is to unify them. It may not be possible to do both at the same time.

Develop a unified approach. The impact of the NATO war criminal policy on coalition unity should not be overlooked. In Somalia many of the national contingents that were part of the U.N. operation had their own orders not to participate in the aggressive efforts to apprehend Aideed. When



IFOR lawyers meeting with local justice officials.

F.M. Lorenz

U.S. Rangers were under attack in October 1993 the Malaysian force had the only armored vehicles in Mogadishu capable of mounting a rescue effort. But they refused to engage pending approval from Kuala Lumpur, and that took more than five hours. In Bosnia some elements of SFOR will be more vulnerable to retaliation from the Serbs should there be a backlash to NATO action to apprehend war criminals. The headquarters of Karadzic is in the French sector of SFOR, and military action there would have to be carefully coordinated. A new policy has the potential to fracture the coalition unless all national contingents are fully aware of the risk and are prepared to take decisive action.

Once a U.S. objective concerning indicted war criminals is determined, our allies must be consulted to develop a unified position. Not every NATO ally may find the same moral imperative in apprehending them. The following questions should be included in the debate. Can peace take hold without more war criminals in custody? Is NATO willing to sacrifice short-term stability to make apprehensions?

There is a major distinction between Karadzic and the lesser known indicted war criminals who wield little power and influence. A strong argument can be made that Karadzic is an

obstacle to peace, but that argument weakens for most of the others. The divisions that separate Bosnians are much deeper than the issue of indicted war criminals, and it is difficult to predict what impact the arrest of ten, twenty, or sixty more would have. Those who believe that apprehension will bring peace may not understand the complexity of the situation.

Effectively use diplomatic and economic elements of national power. Up to now American diplomacy has been ineffective in apprehending war criminals. The pressure that forced the parties to negotiate at Dayton has dissipated. But renewed efforts could weaken nationalist parties and undermine support for Karadzic and Mladic. The Byzantine political situation in the Republic of Serbska may be ripe for a shift in power. Economic sanctions may be the most powerful means of achieving policy goals in the former Yugoslavia. Serbia is reeling from years of sanctions and the government of Milosovic is threatened. Although the primary sanctions have been removed, there is still the opportunity to link economic aid to the delivery of indicted war criminals. The new High

Representative in Bosnia has issued a warning concerning war criminals indicating that those who do not fulfill the commitments made at the negotiating table will not enjoy his support.

Military action used in isolation is certain to enhance the status of the radical nationalist parties and make heroes of Mladic and Karadzic. A carefully crafted policy, coordinated with a military threat, has the best hope of bringing indicted war criminals to justice.

In the first weeks of August 1997 the Clinton administration made a renewed diplomatic effort in the Balkans. Time is running out on the plan to remove all U.S. ground troops from Bosnia by summer 1998. Ambassador Richard Holbrooke, the architect of the Dayton accord, was sent back to the Former Yugoslavia with a direct message. Unless Karadzic is removed from a position of influence he will be arrested. This effort was tied to a recent military initiative, the special police in Serbska being classified as a military force and put under SFOR control. The special police have been Karadzic's primary protection, and this move could dramatically increase his vulnerability. The real question is whether this action will strengthen or weaken Karadzic's hand in the Machiavellian world of Serb politics.

Develop a military strategy. Once the political objectives are set a strategy can be devised. There may be a range of options, from the status quo of a general military presence to increased presence and patrols to decisive commando raids on selected military headquarters. An effective military strategy will have to deal with civilian disturbances and hostage taking, all proven tactics of the Bosnian Serbs. It is important to recall that SFOR has fewer troops today than IFOR and action in one part of the country is likely to provoke reactions elsewhere. A comprehensive plan of action at the operational and tactical level will be necessary.

Choose the right force. After a strategy is devised it is necessary to ensure that we have the right force for the mission. In Somalia in 1993 the United States correctly recognized that the mission changed from providing general security to conducting assaults in

urban terrain. Army special operations forces (Rangers) were tasked. There may be a requirement for a tactical helicopter assault on the heavily defended military headquarters of Mladic or a commando raid on Karadzic's capital in Pale. With the right force and mission we are well on the way to accomplishing the objective.

Most soldiers are not trained for law enforcement. Battle skills are not easily translated into crowd control. Violence and prompt action are stressed in combat training but restraint and tact are required in peace support missions. These factors can often be overcome with the right training and assignment of achievable missions. The initial U.S. contingent in Bosnia was comprised primarily of the 1st Armored Division, a heavy force designed for mechanized combat in open terrain. Once it became clear that there was no organized military opposition, the force was modified to include a greater mix of light infantry. Military police were added during national elections. The U.S. force in Bosnia responded with flexibility to new tasks and is adequate for the present mission; but this could change overnight if hunting down war criminals is added.

On July 10, 1997 NATO policy on indicted war criminals took a new turn. British SFOR forces conducted a military operation that killed one suspect and apprehended another. Both individuals were well known and serious impediments to peace in that sector, and careful coordination with ICTY was required, including the preparation of "sealed indictments" to preserve the element of surprise. NATO officials maintained that this did not signal a change in overall policy, but there is no doubt that the pressure on the indicted war criminals has increased.

Have the will to carry through. If the use of force involves increased patrols and pressure tactics U.S. troops must prepare for escalation and increased risks. And if they conduct commando raids to apprehend Serb leaders they will be committed to combat. Defense analysts may see a moral imperative in pursuing indicted war criminals, but that view may not be shared by Americans whose sons and daughters are

serving in Bosnia. Congress has substantial misgivings about U.S. presence there, and a bill has been introduced requiring the withdrawal of troops before the date committed to by the administration. If there is to be a new policy, the American people and Congress must be prepared for combat deaths in the name of international justice. Such a position poses a dilemma because its public debate would likely erase any element of surprise.

The current NATO policy concerning indicted war criminals in the Balkans is not the result of timidity or indifference. It reflects painful compromise and recognition that not all our objectives can be immediately realized. Though often criticized and misunderstood, it has effectively served the ends of peace and stability in the former Yugoslavia. Still, the call for more decisive action may increase. There is justifiable concern that the ICTY mandate will expire without more individuals in custody. If the pursuit and apprehension of indicted war criminals is to be an objective in the conduct of peace operations, policies must be carefully developed and executed. Finally, the mission must not be assigned without the intention of seeing it through. An indecisive policy is worse than no policy at all and will ultimately undermine U.S. and NATO credibility. A coordinated approach that includes diplomatic, economic, and military instruments of power will be most effective in building a lasting peace. JFQ

NOTES

¹ Theodor Meron stated, "given the military muscle IFOR now possesses, it is a disgrace that the principal indictees have not been detained, let alone delivered up to The Hague." See "Answering for War Crimes: Lessons from the Balkans," *Foreign Affairs*, vol. 76, no. 1 (January/February 1997), pp. 2-8.

² "The political object is the goal, war is the means of reaching it, and means can never be considered in isolation from its purpose," Carl von Clausewitz, *On War*, edited and translated by Michael Howard and Peter Paret (Princeton: Princeton University Press, 1976), p. 87. See also Charles W. Kegley and Eugene R. Wittkopf, *American Foreign Policy, Pattern and Process*, 5th ed. (New York: St. Martin's Press, 1996).

³ Joint Warfighting Center, *Joint Task Force Commanders' Guide to Peace Operations* (Fort Monroe, Va.: Joint Warfighting Center, 1995), p. 45.

⁴ "All states shall take any measures necessary under their domestic law to implement the provisions of the present resolution and the statute, including the obligation of states to comply with requests for assistance or orders issued by a trial chamber under article 29 of the statute" (Security Council resolution 827, section 4).

⁵ The military annex (1A) calls for parties to the agreement "to cooperate fully with any international personnel, including investigators of the tribunal." The parties included the Republic of Bosnia and Herzegovina, Federation of Bosnia and Herzegovina, Republika Srpska, the Republic of Croatia, and Federal Republic of Yugoslavia.

⁶ These provisions require state parties "to search for persons alleged to have committed, or to have ordered to be committed, such grave breaches, and shall bring such persons, regardless of their nationality, before its own courts," the courts of another state, or an international criminal court (see Geneva Convention no. I, art. 49; no. II, art. 50; no. III, art. 129; no. IV, art. 146).

⁷ Robert Oakley and John Hirsch, *Somalia and Operation Restore Hope* (Washington: U.S. Institute of Peace Press, 1995); Kenneth Allard, *Somalia Operations: Lessons Learned* (Washington: National Defense University Press, 1995).

⁸ Security Council resolution 837 did not mention Aideed by name but it clearly applied to him. Jonathan Howe, the U.N. special representative, took prompt action by putting a price on his head, increasing U.S. military efforts to apprehend him.

⁹ "The Security Council has responded by ordering the capture, detention, and trial of Mr. Aideed. Failure to take action would have signaled to other clan leaders that the United Nations is not serious. Advocates of appeasement seem to forget that last year the United Nations tried to cooperate with Mr. Aideed and his counterparts. It did not succeed." Reported in "Yes, There Is a Reason To Be in Somalia," *The New York Times*, August 10, 1993, p. A-19.

¹⁰ "Pentagon Changes Its Somalia Goals as Effort Falters," *The New York Times*, September 27, 1993, p. A-1.

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B. DATE Report Downloaded From the Internet 10/05/98

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1400 Defense Pentagon
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D. Currently Applicable Classification Level: Unclassified

E. Distribution Statement A: Approved for Public Release

F. The foregoing information was compiled and provided by:
DTIC-OCA, Initials: VM___ Preparation Date: 10/05/98_____

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